IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE K.BALAKRISHNAN NAIR

WEDNESDAY, THE 21ST MARCH 2007 / 30TH PHALGUNA 1928

WP(C).No. 9666 of 2007(A)

PETITIONER:

G.AYYAPPAN PILLAI, PROPRIETOR,
M/S.HINDUSTAN AGENCIES, JAYA NAGAR,
MARADU P.O., ERNAKULAM DISTRICT.

BY ADV. SRI.V.P.SUKUMAR,
SRI.KURYAN THOMAS.

RESPONDENTS:
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1. **THE ASSISTANT COMMISSIONER (AUDIT ASSESSMENT), OFFICE OF THE DEPUTY COMMISSIONER (AA), COMMERCIAL TAXES, ERNAKULAM.**

2. **THE DEPUTY COMMISSIONER (APPEALS), COMMERCIAL TAXES, ERNAKULAM.**

BY SR. GOVT. PLEADER SRI. MOHAMMED RAFIQ.

THIS WRIT PETITION (CIVIL) HAVING BEEN FINALLY HEARD ON 21/03/2007,THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

W.P.(C). NO.9666/2007:

APPENDIX

PETITIONER'S EXHIBITS:

EXT.P.1: COPY OF THE APPLICATION IN FORM 1D DTD. 08/03/2006 SUBMITTED BY THE PETITIONER BEFORE THE R.1.

EXT.P.2: COPY OF THE ASSESSMENT ORDER DTD. 30/11/2006 PASSED BY THE R.1. FOR 2005-06.

EXT.P.3.A: COPY OF THE ASSESSMENT ORDER DTD. 30/11/2006 FOR THE RETURNS PERIODS APRIL, 2006.

EXT.P.3.B: COPY OF THE ASSESSMENT ORDER DTD. 30/11/2006 FOR THE RETURNS PERIODS MAY,2006.

EXT.P.3.C: COPY OF THE ASSESSMENT ORDER DTD. 30/11/2006 FOR THE RETURNS PERIODS JUNE, 2006.

EXT.P.3.D: COPY OF THE ASSESSMENT ORDER DTD. 30/11/2006 FOR THE RETURNS PERIODS JULY, 2006.

EXT.P.3.E: COPY OF THE ASSESSMENT ORDER DTD. 30/11/2006 FOR THE RETURNS PERIODS AUGUST 2006.

EXT.P.3.F: COPY OF THE ASSESSMENT ORDER DTD. 30/11/2006 FOR THE RETURNS PERIODS SEPTEMBER 2006.

EXT.P.4: COPY OF THE APPEAL DTD. 12/02/2007 FOR 2005-06 FILED BY THE PETITIONER BEFORE THE R.2.

EXT.P.5.A: COPY OF THE APPEAL DTD. 12/02/2007 FILED BY THE PETITIONER BEFORE THE R.2. FOR APRIL, 2006.

EXT.P.5.B: COPY OF THE APPEAL DTD. 12/02/2007 FILED BY THE PETITIONER BEFORE THE R.2. FOR MAY 2006.

EXT.P.5.C: COPY OF THE APPEAL DTD. 12/02/2007 FILED BY THE PETITIONER BEFORE THE R.2. FOR JUNE, 2006.

EXT.P.5.D: COPY OF THE APPEAL DTD. 12/02/2007 FILED BY THE PETITIONER BEORE THE R.2. FOR JULY, 2006.

EXT.P.5.E: COPY OF THE APPEAL DTD. 12/02/2007 FILED BY THE PETITIONER BEFORE THE R.2. FOR AUGUST, 2006.

W.P.(C). NO. 9666/2007:

EXT.P.5.F: COPY OF THE APPEAL DTD. 12/02/2007 FILED BY THE PETITIONER BEFORE THE R.2. FOR SEPTEMBER 2006.

EXT.P.6: COPY OF THE ORDER DTD. 20/02/2007 PASSED BY THE R.2.

//TRUE COPY//

prv.

K.BALAKRISHNAN NAIR, J.

W.P.(C).No.9666 of 2007-A

Dated this the 21st day of March, 2007

JUDGMENT

The petitioner challenges Ext.P6 interim order passed by the second respondent appellate authority. According to him, the goods involved are medicines and therefore tax at the rate of 4% is payable by him. Further, even if it is treated as not medicine, he is entitled to get input tax credit as the tax has been collected by the dealer on the maximum retail price. The petitioner submits, in any view of the matter, there may not be any liability to pay any additional amount over and above that has already been paid by him.

2. I heard the learned Government Pleader for the respondents.

3. I find prima facie considerable force in the submission of the learned counsel for the petitioner. So, I feel that interim order can be granted on more liberal terms. Accordingly, it is ordered that further recovery pursuant to Exts.P2 and P3 series assessment orders will be kept in abeyance for a period of three months from today. The appellate authority shall pass final orders on Exts.P4 and P5 series appeals filed by the petitioner, within two months from the date of production of a copy of this judgment.

The Writ Petition is disposed of as above.

K.BALAKRISHNAN NAIR, JUDGE.

MS